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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Manoel Tenorio

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EXAMINER

JOHNSON, GREGORY L

ART UNIT

PAPER NUMBER

3691

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

04/20/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

09/945,296

Applicant(s)

TENORIO, MANOEL

Examiner

GREGORY JOHNSON

Art Unit

3691

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 January 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 January 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 11/28/2001.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

1. This office action is in response to Applicant's Amendment received on January 30, 2007.

#### ***Drawings***

2. The drawings were received on January 30, 2007. These drawings are acceptable. Prior objection to the Drawing contained in the Office Action dated November 27, 2006 has been withdrawn.

#### ***Specification***

3. The new title of the invention received on January 30, 2007. The new title is acceptable. Prior objection to the Specification contained in the Office Action dated November 27, 2006 has been withdrawn.

#### ***Status of Claims***

4. Changes were made to independent Claims 1, 11, 21, 31, and 32 and dependent Claims 2-10, 13-19, and 23-29, which resulted in no new matter being added. As a result of these changes, the prior Rejection under 35 U.S.C. § 112 contained in the Office Action dated November 27, 2006 has been withdrawn.

#### ***Response to Arguments***

5. Applicant's arguments with respect to claims 1-32 have been considered but are moot in view of the new ground(s) of rejection.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. Claims 1-5, 7, 9-15, 17, 19-25, 27, and 29-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over La Mura et al. (hereinafter La Mura), Pat. No. 7,058,602 B1 and in view of Kinney Jr. et al. (hereinafter Kinney) Pat. No. 6,871,191 B1, Johnson et al., Pat No. 6,598,029 and Wellman (hereinafter Wellman) Pat. No. 6,952,682 B1.

As to claim 1, La Mura discloses a system and method for an electronic marketplace (i.e. an online auction system (col. 1, lines 59-64) comprising:

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one or more computers collectively supporting a market (col. 4, lines 43-47); a market having two sides (i.e., buyers and sellers) (col. 2, lines 3-7); first side sealed such that offers associated with the first side are inaccessible to substantially all of the market participants (col. 8, lines 7-12); computers collectively operable to receive offers (col. 5, lines 14-26); La Mura discloses a plurality of enhanced auction modules (i.e., rules) (col. 5, lines 50-58; & Fig. 2).

However, La Mura does not explicitly disclose an electronic marketplace in which there are generally substantially fewer market participants associated with the first side than with the second side, each market participant associated with the first side generally having a substantially greater market capacity than each market participant associated with the second side, the second side being substantially open such that offers associated with the second side are substantially accessible to substantially all of the market participants, the one or more computers collectively operable to: receive offers from market participants associated with the first side and from market participants associated with the second side, each offer comprising at least an offered price and an offered quantity; prioritize among any offers associated with the first side that comprise substantially equal offered prices and among any offers associated with the second side that comprise substantially equal offered prices according to a predetermined prioritization scheme, the prioritization among such substantially equally priced offers determining the order in which they are matched with other offers; match a first offer associated with the first side with a second offer associated with the second side according to a relationship between a first offered price associated with the first

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offer and a second offered price associated with the second offer; and determine a strike price for the match between the first offer and the second offer based on the relationship between the first and second offered prices.

However, Kinney discloses a system and method comprising fewer market participants associated with the first side than with the second side (i.e., fewer buyers than sellers) (col. 2, lines 23-25); the second side is open (i.e., supplier side) (col. 4, lines 8-11); each receiving offer comprising of at least an offered price and quantity (col.8, lines 10-12); and a process for determining a strike price for the match between the first offer and the second offer (col.11, lines 27-35 and Fig. 6). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include the aforementioned limitation as disclosed by Kinney within La Mura for the motivation of providing details on the market participants within an auction and describing the auction process of matching buyers and suppliers so that transactions can take place electronically (col. 1, lines 17-22).

In addition, Wellman discloses a predetermined prioritization scheme that selects the order in which bids are matched with offers (e.g. a scheme for determining a winning bid based bidding lowest price, or highest price, or delivery date; col. 9, lines 25-34). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include the aforementioned limitation as disclosed by Wellman within La Mura for the motivation of having a scheme or predetermined rules for selecting the winning bid (i.e, buyer) when two or more buyers have equal bids.

In addition, Johnson teaches that in an energy supply auction the participants on one side (i.e. the electric power or natural gas suppliers) have greater market capacity than the market participants on the second side (i.e. end users and resellers). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include the aforementioned limitation as disclosed by Johnson within La Mura for the motivation of providing details on who the market participants are within an auction (i.e. marketplace) for energy supply (col. 5, lines 58-67).

As to claim 11, La Mura discloses a computer-implemented method comprising: a market having two sides (i.e., buyers and sellers) (col. 2, lines 3-7); first side being sealed such that offered offers associated with the first side are inaccessible to all of the market participants (col. 8, lines 7-12); La Mura discloses a plurality of enhanced auction modules (i.e., rules) (col. 5, lines 50-58; and Fig. 2), however, La Mura does not explicitly disclose: fewer market participates associated with the first side; second side being open such that offers associated with the second side are accessible to all of the market participants; receiving offers comprising of at least an offered price and quantity; a predetermined prioritization scheme to prioritize among equally priced offers and matched with other offers; a strike price for the match between the first offer and the second offer.

However, Kinney discloses a system and method comprising fewer market participates associated with the first side than with the second side (i.e., fewer buyers

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then sellers) (col. 2, lines 23-25); the second side is open (i.e., supplier side) (col. 4, lines 8-11); each receiving offer comprising of at least an offered price and quantity (col.8, lines 10-12); and a process for determining a strike price for the match between the first offer and the second offer (col.11, lines 27-35 and Fig. 6). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include the aforementioned limitation as disclosed by Kinney within La Mura for the same motivation as claim 1 above.

In addition, Wellman discloses a predetermined prioritization scheme that selects the order in which bids are matched with offers. (col. 9, lines 25-34). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include the aforementioned limitations as disclosed by Wellman within La Mura for the same motivation as claim 1 above.

As to claim 21, La Mura discloses software supporting a market comprising: a market having two sides (i.e., buyers and sellers) (col. 2, lines 3-7); first side being sealed such that offered offers associated with the first side are inaccessible to all of the market participants (col. 8, lines 7-12); software embodied in a computer-readable medium (col. 2, lines 34-42); La Mura discloses a plurality of enhanced auction modules (i.e., rules) (col. 5, lines 50-58; and Fig. 2), however, La Mura does not explicitly disclose:  
fewer market participates associated with the first side; second side being open such that offers associated with the second side are accessible to all of the market



participants; receiving offers comprising of at least an offered price and quantity; a predetermined prioritization scheme to prioritize among equally priced offers and matched with other offers; a strike price for the match between the first offer and the second offer.

However, Kinney discloses a system and method comprising fewer market participants associated with the first side than with the second side (i.e., fewer buyers than sellers) (col. 2, lines 23-25); the second side is open (i.e., supplier side) (col. 4, lines 8-11); each receiving offer comprising of at least an offered price and quantity (col.8, lines 10-12); and a process for determining a strike price for the match between the first offer and the second offer (col.11, lines 27-35 and Fig. 6). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include the aforementioned limitation as disclosed by Kinney within La Mura for the same motivation as claim 1 above.

In addition, Wellman discloses a predetermined prioritization scheme that selects the order in which bids are matched with offers. (col. 9, lines 25-34). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include the aforementioned limitations as disclosed by Wellman within La Mura for the same motivation as claim 1 above.

As to claim 31, La Mura discloses a system supporting a market comprising: a market having two sides (i.e., buyers and sellers) (col. 2, lines 3-7); first side being sealed such that offered offers associated with the first side are inaccessible to all of the

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market participants (col. 8, lines 7-12); La Mura discloses a plurality of enhanced auction modules (i.e., rules) (col. 5, lines 50-58; and Fig. 2), however, La Mura does not explicitly disclose:

fewer market participates associated with the first side; second side being open such that offers associated with the second side are accessible to all of the market participants; receiving offers comprising of at least an offered price and quantity; a predetermined prioritization scheme to prioritize among equally priced offers and matched with other offers; a strike price for the match between the first offer and the second offer.

However, Kinney discloses a system and method comprising fewer market participates associated with the first side than with the second side (i.e., fewer buyers than sellers) (col. 2, lines 23-25); the second side is open (i.e., supplier side) (col. 4, lines 8-11); each receiving offer comprising of at least an offered price and quantity (col.8, lines 10-12); and a process for determining a strike price for the match between the first offer and the second offer (col.11, lines 27-35 and Fig. 6). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include the aforementioned limitation as disclosed by Kinney within La Mura for the same motivation as claim 1 above.

In addition, Wellman discloses a predetermined prioritization scheme that selects the order in which bids are matched with offers. (col. 9, lines 25-34). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include

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the aforementioned limitations as disclosed by Wellman within La Mura for the same motivation as claim 1 above.

As to claim 32, La Mura discloses an electronic marketplace comprising: one or more computers collectively supporting a market (col. 4, lines 43-47); a market having a bid side and an ask side (i.e., bidders and sellers) (col. 2, lines 9-12); bid side being sealed such that bid prices and bid quantities associated with bids are inaccessible to the buyers and sellers (col. 8, lines 7-12); computers collectively operable to receive bids from buyers and asks from sellers (col. 5, lines 14-26). La Mura discloses a plurality of enhanced auction modules (i.e., rules) (col. 5, lines 50-58; and Fig. 2), however, La Mura does not explicitly disclose: fewer market participants associated with the first side; each bid comprising at least a bid price and a bid quantity; each ask comprising at least an ask price and an ask quantity; a predetermined prioritization scheme; a strike price for the match between the first offer and the second offer; removal or reduction of ask quantity due to the ask being fully depleted or partially depleted as a result of matched bids.

However, Kinney discloses a system and method comprising where there are fewer buyers associated with the bid side than there are sellers associated with the ask side (col. 2, lines 23-25); the ask side being open such that ask prices associated with asks are accessible to the buyers and sellers (col. 4, lines 8-11); each bid comprising at least a bid price and a bid quantity (col. 8, lines 10-12); each ask comprising at least an ask price and an ask quantity (col. 8, lines 10-12); match a bid with an ask according to

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a relationship between a corresponding bid price and a corresponding ask price (col.11, lines 27-35 and Fig. 6); determine a strike price for the match between the bid and the ask based on the relationship between the corresponding bid and ask prices (col.11, lines 27-35 and Fig. 6); removal or reduction of ask quantity due to the ask being fully depleted or partially depleted as a result of matched bids (col. 11, lines 35-51). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include the aforementioned limitation as disclosed by Kinney within La Mura for the same motivation as claim 1 above.

In addition, Wellman discloses a predetermined prioritization scheme that prioritizes among any bids (or asks) that comprise equal bid (or asks) prices according to the order in which they are received (col. 9, lines 25-34). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include the aforementioned limitations as disclosed by Wellman within La Mura for the same motivation as claim 1 above.

As to claims 2, 12 and 22, La Mura discloses a system and method comprising: buyers and sellers (col. 2, line 3-7) (i.e., market participants = buyers & sellers = client nodes).

As to claims 3, 13 and 23, La Mura discloses a system and method wherein: buyers are sealed such that offered prices and offered quantities of offers associated with the buyers are inaccessible to all market participants (col. 8, lines 7-12).

As to claims 7, 17, and 27, La Mura discloses auction wherein the strike price for the match between the first and second offers comprises a price between the first and second offered prices (col. 5 lines 59-66).

As to claims 10, 20 and 30, La Mura discloses a system and method wherein the one or more computers are further operable to remove an offer from the second side of the market ...", (col. 7, lines 18-23).

As to claims 4, 14 and 24, La Mura does not explicitly disclose:  
sellers are open such that offered prices of offers associated with the sellers are accessible to all market participants. However, Kinney does disclose that bids by suppliers (i.e., sellers) are broadcast to every market participant (col. 4, lines 8-11). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include the aforementioned limitation as disclosed by Kinney within La Mura for the motivation of notifying market bidders to changes in market conditions.

As to claims 9, 19 and 29, La Mura does not explicitly disclose:  
a partial depletion of an offered quantity. However, Kinney discloses a method wherein the unfilled quantity is reduced by the quantity that has been accepted (col. 11, lines 40-51). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include the aforementioned limitation as disclosed by Kinney

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within La Mura for the motivation of tracking the available quantity (i.e., amount of items available) and closing the auction when the quantity equals zero.

As to claims 5, 15 and 25, La Mura does not explicitly disclose:  
equally priced offers are prioritized according to the order in which they are received. However, Wellman discloses a system that selects the matching bid having an earlier delivery date (col. 9, lines 30-34). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include the aforementioned limitations as disclosed by Wellman within La Mura for the same motivation as claim 1 above.

9. Claims 6, 8, 16, 18, 26 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over La Mura, Kinney and Wellman and as applied to claim 1, 11 and 21 above, and further in view of Walker et al. (hereinafter Walker) Pat. No. 7,039,603 B2.

As to claims 6, 16 and 26, La Mura does not explicitly disclose:  
the strike price for the match between the first and second offers is equal to the first and second offered prices. However, Walker discloses a purchasing system that arranges for a buyer to purchase a product from a seller at a first price (col. 5, lines 10-11). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include the aforementioned limitations as disclosed by Walker within La Mura for the motivation of matching a seller's offer (whereas, offer equals price and quantity) with an equal offer from a buyer.

As to claims 8, 18 and 28, La Mura does disclosure "second-price" auctions where the second-highest bid is the purchasing price. (i.e., strike price) (col. 5, lines 59-66). La Mura does not explicitly disclose:  
the strike price for the match between the first and second offers comprises the second offered price plus a predetermined fraction of the price difference between the first and second offered prices. However, Walker discloses the purchasing price may not be equal to the first price (col. 5, lines 30-33). Walker discloses that the first price may be adjusted based on an applicable tax or penalty. It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include the aforementioned limitation as disclosed by Walker within La Mura for the motivation of penalizing the buyer and seller for creating a crossed market.

### ***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

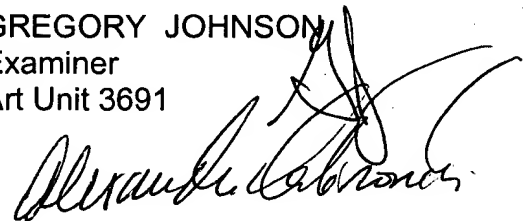
- (a) Huberman Pat No. 6,078,906: "... in a sealed-bid second-price auction, no bidder knows the value of any bid other than its own..." (col. 10, lines 40-41).
- (b) Rackson et al. Pat. No. 6,415,270: "If more than one bid is detected with the same bid value such that a tie occurs, a priority scheme is used to determine which bid is the optimal bid." (col. 13, lines 8-15).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to GREGORY JOHNSON whose telephone number is (571) 272-2025. The examiner can normally be reached on Monday - Friday, 8:30AM - 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ALEXANDER KALINOWSKI can be reached on (571) 272-6771. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

GREGORY JOHNSON  
Examiner  
Art Unit 3691



**ALEXANDER KALINOWSKI**  
**SUPERVISORY PATENT EXAMINER**